

### **REMARKS**

This Amendment is being filed in response to an Office Action mailed on October 25, 2004. Claims 1-3, 7-11, 21-28 and 32-37 are pending in this application and stand rejected. Claims 1-3, 7-11, 21-28 and 32-37 have been amended. Claims 1, 21, 36 and 37 are independent. Applicant respectfully requests reconsideration of the present application in light of the foregoing amendments and the following remarks.

#### **Rejections under 35 U.S.C. §102(b)**

In the Office Action, claim 37 was rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,098,205 to Schwartz et al. (Schwartz). According to the Examiner, Schwartz discloses eyewear comprising a frame having a removable sealing member attached thereto, wherein the sealing member comprises a gasket member, which covers at least a portion of the frame's rear surface. Applicant respectfully traverses this rejection. Claim 37, as currently amended, is directed to sunglasses having a "removable sealing member" that is "removably attached to the frame". Schwartz, in contrast, is directed to goggles having a sealing pad that is either permanently attached to the frame or "removably attached... allowing for easy replacement of the sealing pad 14 after it is worn or damaged". According to the disclosure of Schwartz, the sealing pad is removed only in order to replace the sealing member, not to permit the wearer to wear the goggles without the sealing pad. To do so would defeat the objective of Schwartz's goggles, which is to provide "isolation of the user's eyes from the outside environment". In addition, claim 37 recites that the sealing member comprises a resilient member, a feature not found on the sealing pad of Schwartz. Accordingly, Schwartz fails to

teach or suggest, and actually teaches away from sunglasses having “removable sealing member... removably attached to the frame”. Applicant respectfully asserts that goggles that can only be worn with the sealing pad is fundamentally different from sunglasses comprising a removable sealing member that can be worn either with or without the sealing member, and therefore, Schwartz fails to teach or suggest claim 37.

The Examiner also rejected claims 21, 32, 33, 35 and 37 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,689,838 to Angermann et al. (Angermann). In the Office Action, the Examiner states that Applicant’s argument regarding Angermann set forth in the September 16, 2004 Amendment were based on “empty” limitations because the claims were not limited to sunglasses. By this Amendment, without conceding the correctness of the Examiner’s position, but merely to advance prosecution of the subject application, independent claims 21 and 37 have been amended to specify “sunglasses”, to address the Examiner’s comments.

Accordingly, Applicant respectfully asserts that Angermann, which is directed to protective goggles, is fundamentally different from the present invention and therefore does not apply to the claims as amended herein. Furthermore, Angermann fails to teach or suggest a removable sealing member as recited in the claimed invention. Angermann discloses a pliable, flexible frame including a foam rubber material (Col. 2, lines 34-39), but does not disclose or suggest a removable sealing member having both a resilient member and a gasket member, which is distinguishable from a pliable, flexible frame.

Furthermore, whereas Angermann is directed toward goggles having interchangeable lenses, Applicant respectfully asserts that goggles with lenses that can be exchanged are fundamentally different from sunglasses having a removable sealing member. The goggles of

Angermann would not be functional once the lens is removed and therefore would not be wearable. Additionally, the lenses are removed for the sole purpose of being replaced with another pair of lenses, more specifically, with “lenses of different colors to provide the optimal vision”. In contrast, the sunglasses as claimed is suitable for wear either with or without the sealing member. Moreover, the purpose of removing the sealing member is not to replace it with another, or in any way in order to “provide optimal vision”, but rather, to provide sunglasses converted from a protective eyewear. At least for the reasons stated above, Applicant respectfully asserts that Angermann does not anticipate or render obvious claims 21, 32, 33, 35 and 37.

**Rejections under 35 U.S.C. §103(a)**

Claims 1-3, 7-9, 11, 22-28, 34 and 36 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Angermann. As discussed above, Angermann is directed to protective goggles, in contrast to the claims, which are directed to sunglasses, as amended herein, and furthermore fails to teach or suggest a removable sealing member. For at least the reasons stated above, and for at least the same reasons that the Examiner’s supervisor found that the goggles of U.S. Patent No. 5,802,622 to Baharad did not render the present invention obvious, Applicant respectfully asserts that Angermann fails to render claims 1-3, 7-9, 11, 22-28, 34 and 36 unpatentable.

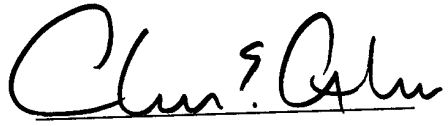
Early and favorable consideration of the present application in view of the amendments to the claims and remarks provided herein is respectfully requested.

**New Oath or Declaration**

In the Office Action, the Examiner states that the oath or declaration is defective because of the C-I-P application. Applicant submits herewith a new Declaration and Power of Attorney, wherein the present application, Serial No. 10/691,771, is identified. Accordingly, Applicant submits that the Examiner's concerns regarding the oath or declaration have been addressed and is now rendered moot.

If any additional fee beyond that authorized by the petition for extension of time filed concurrently herewith is required, the Examiner is hereby authorized to charge the amount of such fees to Deposit Account No. 19-4709.

Respectfully submitted,

 43,531  
(Lw)

Steven B. Pokotilow, Esq.  
Registration No. 26,405  
Attorney for Applicant  
STROOCK & STROOCK & LAVAN LLP  
180 Maiden Lane  
New York, New York 10038  
(212) 806-5400